

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JAMES D. BARFIELD, et al.,

Plaintiffs,

vs.

LEHMAN BROTHERS BANK FSB, et al.,

Defendants.

Case No. 2:08-cv-01032-RCJ-PAL

REPORT OF
FINDINGS AND RECOMMENDATION

Before the court is plaintiffs' failure to respond to the court's Order to Show Cause (Dkt. #33). In the order to show cause, the plaintiffs were given until December 12, 2009 to show cause in writing why this action should not be dismissed for failure to prosecute. The plaintiffs having failed to comply with the order, the court makes the following findings and recommendation.

FINDINGS

1. The Complaint in this action was filed in state court and removed August 8, 2008 (Dkt. #1).
2. Plaintiffs were initially represented by counsel but are now appearing *pro se*.
3. The district judge entered an order granting defendants Aurora Loan Services, LLC, and Lehman Brothers Bank, FSB's Motion to Dismiss November 20, 2008 (Dkt. #21) and entered Judgment in their favor (Dkt. #22).
4. On June 23, 2009, the Clerk of the Court entered a Notice of Intent to Dismiss Pursuant to Fed. R. Civ. P. 4(m) the complaint in this action because no proof of service had been filed as to defendant American Trust Deed Services Corp. (Dkt. #25). The notice mailed to Marcie Barfield was

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1 returned by the United States Postal Service as undeliverable, “unable to forward, did not resend, no
2 current address.”

3 5. On August 18, 2009, the district judge dismissed American Trust Deed Services Corp.
4 without prejudice (Dkt. #28). The Order was mailed to the plaintiffs and again returned as
5 undeliverable, “unable to forward, no current address, did not remail.”

6 6. The plaintiffs have failed to prosecute this action and have not kept the court advised of
7 their current address.

8 7. The court conducted a status conference in this case on November 5, 2009. Plaintiffs
9 were served with notice of the status conference but did not appear. Counsel for defendant Title Court
10 Services, Inc., Xenophon Peters appeared.

11 8. Because the plaintiffs did not appear for the status conference and have not kept the
12 court advised of their current address, the court required the plaintiffs to show cause why this action
13 should not be dismissed for their failure to prosecute.

14 9. The court’s Order to Show Cause (Dkt. #33) cited the provisions of LR 41-1 which
15 provides “all civil actions that have been pending in this court for more than nine months without any
16 proceeding of record having been taken may, after notice, be dismissed for want of prosecution on
17 motion of counsel or by the court.”

18 10. Plaintiff Marcie Barfield appeared in court on the date set for hearing on defendants’
19 Motion to Dismiss (Dkt. #5) on November 8, 2008. Since then, neither plaintiff has appeared or filed
20 any proceeding of record.

21 11. The plaintiffs have not taken any action to prosecute their claims, have not responded to
22 the Notice of Intent to Dismiss (Dkt. #25), have not kept the court advised of their current address, and
23 did not respond to the order to show cause.

24 Based on the foregoing,

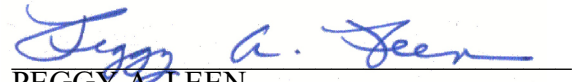
25 **IT IS RECOMMENDED** that the plaintiffs’ complaint against the only remaining defendant,
26 Title Court Services, Inc., be dismissed for their failure to prosecute their claims, failure to respond to

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1 the Notice of Intent to Dismiss (Dkt. #25), failure to keep the court advised of their current address, and
2 failure to respond to the Order to Show Cause (Dkt. #33).

3 Dated this 20th day of January, 2010.

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6 PEGGY A. LEEN
7 UNITED STATES MAGISTRATE JUDGE

8 **NOTICE**

9 These findings and recommendations are submitted to the United States District Judge assigned
10 to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within ten days after being served
11 with these findings and recommendations, any party may file written objections with the court.
12 Pursuant to Local Rule of Practice (LR) IB 3-2(a), any party wishing to object to the findings and
13 recommendations of a magistrate judge shall file and serve *specific written objections* together with
14 points and authorities in support of those objections, within ten (10) days of the date of service of
15 the findings and recommendations. The document should be captioned "Objections to Magistrate
16 Judge's Findings and Recommendations." The parties are advised that failure to file objections
17 within the specified time may waive the right to appeal the District Court's Order. Martinez v. Ylst,
18 951 F.2d 1153 (9th Cir. 1991). The points and authorities filed in support of the specific written
19 objections are subject to the page limitations found in LR 7-4.
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